

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-434

August 6, 2002

CONVERSENT COMMUNICATIONS OF
MAINE LLC
Request for Authorization to Mortgage Property
Under 35-A M.R.S.A. § 1101

ORDER APPROVING
REQUEST TO MORTGAGE
PROPERTY

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

On July 24, 2002, Conversent Communications of Maine, LLC ("Conversent") filed with the Commission its Request for Authorization to Mortgage Property under 35-A M.R.S.A. § 1101. This Order approves the Company's request.

Conversent is a public utility that is authorized to operate as a reseller and a facilities-based competitive local exchange carrier (CLEC) in Maine. In March, 2001, Conversent's parent company, Conversent Communications, LLC, entered into a Credit Agreement with Fleet National Bank as agent for itself and a group of other lenders, whereby the lenders agreed to provide financing to the parent company and certain of its affiliates. As part of the Credit Agreement, Conversent is a party to a Guarantee and Security Agreement dated March 9, 2001, whereby Conversent provides Fleet with a security interest in its property that acts as a guarantee of the Credit Agreement with the parent entity. Therefore, Conversent's participation in the Credit Agreement is probably an affiliated interest transaction or arrangement that would require Commission approval under 35-A M.R.S.A. § 707. Because Order granting Conversent a Certificate of Public Convenience and Necessity, Conversent exempts the Company from the approval requirements of Section 707, the arrangement does not require approval under Section 707.

Although the loan guarantee itself does not require Commission approval under Section 707, the granting of a security interest in property of a public utility that is necessary for the provision of service to the public does require approval under 35-A M.R.S.A. § 1101. Section 1101 requires a public utility to obtain authorization from the Commission **before** it enters into any agreement that involves the mortgaging of its property. The prior approval requirement is an integral part of the statutory scheme by which utilities may mortgage or otherwise encumber their property, and we expect utilities to comply with this requirement.

Conversent clearly has not complied with that provision of the statute in that the mortgage was entered into over a year ago. Conversent, however, is a CLEC, and the Commission generally has applied a lighter regulatory hand to CLECs. Because no apparent harm was done to ratepayers or the Company by its failure to obtain prior Commission approval, we will grant the Company's request. We make no finding as to the enforceability of the mortgage prior to our approval. The financing that is secured

by this mortgage may have, as the Company suggests, facilitated and may continue to facilitate the provision of competitive telecommunications services in Maine.

Therefore, we

APPROVE

Pursuant to 35-A M.R.S.A. § 1101 the entering by Conversent Communications of Maine, LLC into the Fleet Credit Agreement, the Guarantee and Security Agreement and any Amendments thereto that grant a security interest in its property to secure financing for Conversent's parent company, Conversent Communications, LLC.

Dated at Augusta, Maine, this 6th day of August, 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.